

Surface Mining Reclamation and Enforcement, Interior

§ 817.97

disposal site be located within 8 feet of any coal outcrop or coal storage area.

[48 FR 44031, Sept. 26, 1983, as amended at 56 FR 65636, Dec. 17, 1991]

§ 817.95 Stabilization of surface areas.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

[48 FR 1163, Jan. 10, 1983]

§ 817.97 Protection of fish, wildlife, and related environmental values.

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) *Endangered and threatened species.* No underground mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) *Bald and golden eagles.* No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or

golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(f) *Wetlands and habitats of unusually high value for fish and wildlife.* The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or